

**International
Institute of
Social Studies**

Erasmus

**A Rights-Based Approach to Juvenile Justice: Exploring the
Diversion of Children in Conflict with the Law in the
Philippines**

A Research Paper presented by:

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(Philippines)

in partial fulfilment of the requirements for obtaining the degree of
MASTER OF ARTS IN DEVELOPMENT STUDIES

Major:

Human Rights, Gender and Conflict:

Social Justice Perspectives

(SJP)

Specialization:

Children and Youth Studies

Members of the Examining Committee:

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The Hague, The Netherlands
November 2020

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List of Acronyms

BCPC	<i>Barangay</i> Council for the Protection of Children
BPA	<i>Bahay Pag-asa</i>
CAR	children at risk
CICL	child/children in conflict with the law
CJIP	Comprehensive Juvenile Intervention Program
CRBA	child rights-based approach
CRC	Convention on the Rights of the Child
CSO	civil society organisation
DILG	Department of Interior and Local Government
DSWD	Department of Social Welfare and Development
EAPRO	East Asia and Pacific Regional Office
HIAF	Humanitarian Legal Assistance Fund
IRA	internal revenue allotment
IRR	implementing rules and regulations
JJWA	Juvenile Justice and Welfare Act
JJWC	Juvenile Justice and Welfare Council
LCPC	Local Council for the Protection of Children
LEO	law enforcement officer
LGU	local government unit
LSWDO	local social welfare and development officer
MACR	minimum age of criminal responsibility
NBOO	National <i>Barangay</i> Operations Office
NGO	non-government organisation
PNP	Philippine National Police
RA	republic act
RBA	rights-based approach
UN OHCHR	United Nations Office of the High Commissioner on Human Rights
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund
WCPD	women and children protection desk

Abstract

The UN Convention on the Rights of the Child (CRC) paved the way towards the legislation of the Juvenile Justice and Welfare Act of 2006, as amended in 2013. Many years have passed, yet substantial gaps remain in the implementation of the juvenile justice system and the administration of diversion mechanisms for CICL. Through a child rights-based approach, this study explored how good practices of centre-based and community-based diversion programs are crafted and implemented at the local level. The study illustrates the perspectives of different duty-bearers and rights-holders regarding their experiences.

Relevance to Development Studies

This study contributes to the emerging literature on the implementation of policies and diversion mechanisms and the critical conversations on how duty-bearers frame and fulfil their obligations to guarantee and protect the rights of children in conflict with the law (CICL). It is important to scrutinize how such policies are implemented on the ground to shed light on the divergences between the framings of CICL in policy and practice, because such policies would have far-reaching implications on how CICL would be regarded in other social sectors. Ultimately, the study's focus on diversion mechanisms is significant in furthering the discourses on how juvenile justice systems contribute to the upholding of international and national legal statutes on children's rights, and how the progress in upholding such policies impede or facilitate development of CICL within other areas of social life.

Keywords

juvenile justice, children in conflict with law, diversion, child rights-based approach, Convention on the Rights of the Child, Philippines, Barangay Council for the Protection of Children, Bahay Pag-asa

Chapter 1

Introduction

1.1 Background of the Study

1.1.1 Children in conflict with the law and the concept of childhood

The concept of childhood is often associated with notions of ‘innocence’ and ‘happiness,’ marginalising experiences that do not fall under this dominant conceptualisation from the West (Ansell 2017: 14; Cheney 2007: 17). Thus, it almost comes naturally to imagine children playing and trying to make sense of the world together with their families, but such is not always the case. There are children who may no longer possess this so-called ‘innocence,’ who should be seen as children, nevertheless. There are children on the streets, there are children who are trafficked into commercial sex exploitation, there are child soldiers, child brides, and the list goes on (Poretti et al 2014, as cited in Ansell 2017: 153). It is argued that this mainstream portrayal of childhood as happy and innocent may be the ideal, but it is not in any way contextualised in local circumstances (Ansell 2017: 26). Yet it seems easy to label the aforesaid experiences as out of the ordinary, even when these are lived realities of actual children.

The focus of this study would be one of these marginalised child groups who are equally part of our society, as much as other children, and these are the children in conflict with the law (CICL). CICL are a heterogeneous group of individuals under the age of majority who are alleged to have committed an offense, ranging from petty or status offenses to major crimes (UN Convention on the Rights of the Child 1990; UNICEF 2006; Young et al 2014: 22). CICL has been widely used by the United Nations (UN) in recent years, as opposed to ‘juvenile delinquent¹,’ a “potentially problematic term” which carries negative connotations that could further stigmatise CICL (Young et al 2014: 22). Hence, from hereon, the children would be referred to as CICL and the act as juvenile offending.

In the Philippine context, the Juvenile Justice and Welfare Act of 2006, as amended in 2013 provides that a “child in conflict with the law refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws” (RA 9344 2006: section 4). Alongside CICL, the same legislation provides a definition for a child at risk (CAR) who has not yet been accused of committing any offenses, but one who is “vulnerable to and at the risk of committing criminal offenses, because of personal, family and social circumstances²” (ibid.).

¹ This remains to be extensively used in academic literature. Young et al (2014: 22) reminds cautious use due to the negative implications it carries. Alternatively, the term ‘juvenile offending’ instead of ‘juvenile delinquency’ is also viewed as a more politically acceptable or appropriate term to lessen stigmatisation (Podgorica 2007: 5).

² The law identifies these circumstances as experiences of: sexual, physical, psychological, mental, economic abuse; sexual or economic exploitation; parental neglect; coming from a dysfunctional or broken family; being out of school; being a street child; being a gang member; living in a community with a high level of criminality or drug abuse; and living in situations of armed conflict (RA 9344 2006: section 4).

Talking about childhood and CICL also raises a discussion of age and discernment. According to United Nations (UN), children are those under the age of 18 years old. The age of 18 years old is widely used as the age of majority, or in other words, when a person is considered legally as an adult (Shoemaker 2009: 3). The challenge, however, is that the use of age as legal demarcation is not always “consistent with developmental views of growth and maturity, biologically, psychologically, or socially,” yet it bears implications on policies that affect the lives of children (Scott 2002, as cited in Shoemaker 2009:3). Furthermore, enough emphasis must be given on the heterogeneity of children who are often just referred to as being below 18 years old (Ansell 2017).

1.1.2 Stigma and discrimination against CICL

In my everyday encounter with people and as portrayed by media, I have noticed how it is easier for society to be empathetic towards children who are clear victims of injustices, as compared to those who seem to be on the other side of the narrative, such as CICL who have broken the law. An interesting excerpt from an old literature in mid-nineteenth century England regarding the attitude towards CICL, while coming from a different place and time, holds some semblances in the perception of the public in my context today:

[The delinquent] is a little stunted man already - he knows much and a great deal too much of what is called life - he can take care of his own immediate interests. He is self-reliant, he has so long directed or mis-directed his own actions and has so little trust in those about him, that he submits to no control and asks for no protection. He has consequently much to unlearn - he has to be turned again into a child . . . (Hill 1855: 2 in May 1973: 7).

This statement was made at a time³ when society was only beginning to understand that children are not little adults who should be subjected to the same penal system as their adult counterparts (May 1973: 7-8). What I would like to illustrate here is how the view on innocence as a defining factor of childhood excludes CICL from being seen and treated as children. Their experience in life and lack of innocence mask the fact that they have different capabilities, special needs, and are entitled to their own rights. This is often used as justification that they have to be punished as threats to society.

A study carried out in Michigan, United States reveals that a gap in the general public’s understanding of adolescent development explains public attitude towards the severity of punishment that juveniles ‘deserve’ (Allen et al 2012: 99). CICL, just like other children, have multi-dimensional lives. It is unfair how people let this single circumstance define these children, “[disregarding] other dimensions of their lives, the social structures and relationships that shape them or the way in which they change over time” (Ansell 2017: 155). Another study done in Ontario, Canada which also looked at perception towards CICL found out that contextual information led to more positive public attitudes (Varma 2006: 175). Following Varma (2006) and prior studies (Covell and Howe 1996; Roberts and Doob 1990; Doob and Roberts 1983; as cited in Varma 2006), as more dimensions of CICL’s lives are

³ It was the dawn of a reformatory rather than a punitive system for CICL in England (May 1973: 8).

given perspective in the eye of the public, these children become more humanised, beyond the surface idea that they are CICL who are thought to deserve punishment more than understanding.

1.1.3 Why do children come in conflict with the law?

CICL are often stereotyped for the wrongs they have committed, which is only a single aspect of their lives, without even caring to ask the whys behind these. In the attempt of academics and practitioners to understand the phenomenon of juvenile offending, there have already been a lot of studies, models and theories coming from different perspectives that aim to explain the associated risks and possible causes behind it (Dematteo and Marczyk 2005; Krisberg and Wolf 2005; Juvenile Justice Reform Commission 2007; Shader 2004; Shoemaker 2009; Siegel and Welsh 2018; Thornberry et al 2006).

Earlier explanations of juvenile offending root from the rational choice theory, whereby CICL are assumed to have weighed the pros and cons before committing offenses (Shoemaker 2009: 66; Siegel and Welsh 2018: 81). This however has been refuted due to its limited understanding and assumptions about children, and its inability to explain certain trends on offenses (Shoemaker 2009: 67; Siegel and Welsh 2018: 92).

Recent developments in explaining juvenile offending have instead found that it could not be “easily accounted for by single-cause, direct explanations” (Shoemaker 2009: 87). Hence, juvenile offending could be looked at as a result of one or a combination of different factors (Juvenile Justice Reform Commission 2007: 6). Existing literature looks at children as individuals and situates them within social institutions (Dematteo and Marczyk 2005; Krisberg and Wolf 2005; Shader 2004; Shoemaker 2002; Siegel and Welsh 2018).

At the individual level, factors such as cognitive abilities, psychological and behavioural characteristics, and substance use have been identified (*ibid.*). While these are categorised as individual-level factors, it must be noted that these “operate within the context of the juvenile's larger environment, and it is the interaction between individual-level risk factors and the juvenile's environment that produces varying levels of risk for antisocial behaviour” (Dematteo and Marczyk 2005: 23).

On the other hand, social factors include family (i.e. family structure, size, quality of relationship, parenting practices), peer influence, gang membership, neighbourhood, school policies, socio-cultural practices, and socio-economic conditions (Dematteo and Marczyk 2005; Krisberg and Wolf 2005; Shader 2004; Shoemaker 2002; Siegel and Welsh 2018).

“Children are not bad to the core” (Shoemaker 2009: 131). Children may be victims of abuse and neglect, inadequate parenting, or economic difficulties (Juvenile Justice Reform Commission 2007: 4). Their decisions may be influenced by their peers or their environment. There is no single and definite reason. Juvenile offending may as well be an indication that a child's right to a nurturing environment embodied by a multitude of children's interlinked rights, is not being met.

1.1.4 Children’s right to diversion in the Philippines: the normative framework

The nearly universally ratified UN Convention on the Rights of the Child (CRC) of 1989 formally acknowledged that not all children experience the same kind of childhood – that there are children who experience difficult ones who need special care and consideration, such as CICA (UN CRC 1989). Having various declarations, rules, statutes, and other international human rights instruments pertaining to children as its backdrop, the CRC set legal safeguards that would protect and promote the different aspects of children’s well-being, acknowledging that the child is still developing physically and mentally (ibid).

While the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) of 1985 already existed before the CRC, the Convention had greater influence and scope because it is legally binding. Hence, CRC’s provisions on juvenile justice has resulted to the establishment of separate juvenile justice systems and implementation of diversion and alternative mechanisms such as that of the Philippines.

“The Philippines expressed its support for the international child rights’ regime by being one of the first countries to ratify the UN Convention on the Rights of the Child (CRC) without reservations in 1990” (Universalia 2015; UN OHCHR 2020, as cited in Cortel 2020: 3). It likewise ratified two Optional Protocols to the CRC particularly on the Sale of Children, Child Prostitution and Child Pornography in 2002, and the Involvement of Children in Armed Conflict in 2003⁴ (ibid.). As a State Party to the CRC, the Philippines is obliged and legally bound to implement measures to ensure the fulfilment of child rights stipulated in the Convention.

This ratification, alongside an almost decade-long advocacy following the release of the UN Committee on the Rights of the Child’s Concluding Observations on the country’s first period review in 1995, resulted in the passage of the Juvenile Justice and Welfare Act (Republic Act No. 9344) in 2006 (Universalia 2015). This law was later strengthened through an amendment in 2013 by virtue of Republic Act No. 10630, thus this would be referred to as the Juvenile Justice Welfare Act (JJWA) as amended, or the Law, hereon.

Before the passage of the Law, the Philippines did not have a judicial system specifically for children in conflict with the law, allowing them to undergo similar proceedings with adult offenders (Sanchez 2017: 140). The lack of a national legislation, despite being a state party to the CRC has allowed the “arrest and detention of children ... to be the measure of first resort” (Defence for Children International Netherlands 2003: 101). Due to court congestion in the country, there were a lot of instances where children had prolonged stay in jails (ibid.). Moreover, while the Supreme Court released the Rules on Juveniles in Conflict with the Law in 2002, the diversion that it provided was only applicable to offenses with

⁴ The Philippines has yet to ratify the third Optional Protocol to the CRC allowing children to take their complaints directly to the Committee on the Rights of the Child, which was adopted in 2014 (UNICEF 2020a; UN OHCHR 2020).

penalties of less than six months of imprisonment (ibid.; Adhikain Para sa Karapatang Pamabata 2004: 181).

“The passage of this landmark law was a recognition on the government’s end that indeed, children have the right to a justice system that caters to their own special needs and vulnerabilities” (Cortel 2020: 3). In comparison with the earlier Supreme Court Rules on Juveniles in Conflict with the Law, the JJWA is more inclusive when it comes to treating children and their rights, notwithstanding their age or the gravity of offense committed.

The Law, through its Declaration of Policy, reflects the protection of the ‘best interests of the child’ according to international standards and the importance of children’s ‘participation’ in the policy formulation and implementation (RA 9344 2006: section 2b, as cited in Cortel 2020: 3). “It likewise recognizes the ‘universal dignity’ of children and their ‘interdependent rights’ to care, nutrition, education, protection from neglect, abuse, cruelty and exploitation that are necessary for their ‘survival and development’” (RA 9344 2006: sections 2c and 2d, as cited in Cortel 2020: 4).

What is noteworthy would be the provision on the ‘development of a comprehensive juvenile intervention program’ and ‘community-based programs on juvenile justice and welfare’ (RA 9344 2006: sections 18 and 19), and the need to implement ‘diversion’ programs in place of court proceedings and sentence (RA 9344 2006: section 23) and ‘rehabilitation and reintegration’ programs (RA 9344 2006: section 52).

The revised implementing rules and regulations (IRR) of the Law, as amended, define ‘intervention’ as “programmatic approaches or systematic social protection programs for children that are designed to:

- (1) promote physical and social well-being of children;
- (2) avert or prevent juvenile delinquency from occurring; and
- (3) stop or prevent children from offending (IRR 2014: rule 21).

The IRR also differentiates between community-based (IRR 2014: rule 22) and centre-based (IRR 2014: rule 42) interventions, according the former as the primary mode of intervention. Rule 76 of the IRR states that intervention programs shall include:

- (a) psycho-social interventions;
- (b) competency and life skills development;
- (c) socio-cultural and recreational activities;
- (d) community volunteer projects;
- (e) leadership training;
- (f) social services;
- (g) health services;
- (h) spiritual enrichment;
- (i) family welfare services;
- (j) community services; and
- (k) continuing education programs.

Moreover, the IRR provides that intervention has three levels, one of which is comprised of “measures to prevent re-offending, i.e. diversion programs, rehabilitation, reintegration and after-care services (IRR 2014: rule 21). In the discussion of what intervention should be applied to a child in conflict with law, the ‘best interest of the child’ always surfaced as the guiding principle.

“Diversion” is provided by the IRR as follows:

Diversion refers to an alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law, on the basis of the child's social, cultural, economic, psychological or educational background, without resorting to formal Court proceedings. (IRR 2014: rule 43).

Diversion, as a means of handling CICL, diverts a child away from formal court proceedings towards the support of the community (UN Beijing Rules 1985: rule 11). This prevents the potentially negative consequences of being involved in the justice system, and instead promotes the provision of rehabilitation and social services (Dematteo and Marczyk 2005: 35). In addition, it also “[removes] juveniles from the potentially stigmatising consequences of being labelled a delinquent” (Shoemaker 2009: 358). Furthermore, CICL who have successfully completed their diversion programs do not have any criminal records, moving forward (UNICEF EAPRO 2017: 90).

According to the Law, a CICL could undergo diversion if she or he: “is above 15 years but below 18 years old; acted with discernment; allegedly committed an offense with an imposable with an imposable penalty of not more than six years of imprisonment (if diversion is conducted at the barangay, police or prosecutor's level), and not more than 12 years of imprisonment (if diversion is resorted to by the Court)” (IRR 2014: rule 44).

Diversion may be implemented at the katarungang pambarangay or community level before the punong barangay or community captain, during police investigation before the police or law enforcement officer (LEO), or during preliminary investigation stage before the prosecutor (IRR 2014: rule 45).

In instances of victimless crimes where the imposable penalty does not exceed six years of imprisonment, the Local Social Welfare and Development Officer (LSWDO) at the municipal or city level shall manage the diversion proceedings, in coordination with the Barangay Council for the Protection of Children (BCPC) (ibid.). On the other hand, “if the imposable penalty for the offense committed exceeds six years of imprisonment but not more than twelve years of imprisonment, diversion may be resorted to only by the Court” (ibid.).

If diversion is determined to be appropriate to a child, diversion proceedings shall then be held, followed by the diversion contract, and the implementation of the diversion program (JJWC 2019). If the diversion was successful, the case would then be closed and after care services shall be implemented. Otherwise, if it was unsuccessful, the case shall be forwarded to the prosecutor or the women and children protection desk (WCPD) of the police (ibid).

In instances where the child acted without discernment, or if the child is 15 years and below, the child shall undergo community-based or centre-based intervention programs, considering several factors such as the gravity of offense, and whether the child is dependent, abandoned, neglected or abused, and whether she or he is a repeat offender (ibid).

1.2 Research Problem and Objectives

Since the time when detention did not seem to be a measure of last resort, and when diversion and rehabilitative interventions were out of reach for Filipino CICL, it could not be discounted that the Philippines has come a long way in terms of promoting CICL's rights. Recent attempts in the Congress to reduce the minimum age of criminal responsibility (MACR), however, "[undermine the country's] gains in setting up a restorative child-sensitive system" (UNICEF 2019). Considered as a violation of children's rights, this resulted in dissent, stronger advocacy from child rights advocates regarding understanding children's rights and development, and discussions about some of the pressing issues surrounding the implementation of the Law (Business Mirror 2019; Dela Peña 2019; Gutierrez 2019). This likewise sparked my interest regarding this subject matter.

Almost a decade and a half since the implementation of the Juvenile Justice and Welfare Act of 2006, as amended in 2013, substantial gaps still remain in the implementation of the juvenile justice system and the administration of diversion mechanisms for CICL. Universalia (2015: iii) argues that "the full implementation of the Law, especially the diversion programs, and adequate compliance at the local level are not satisfactory."

Since considerable portion of the implementation of the Law lies at the local level⁵, the Juvenile Justice and Welfare Council (JJWC) looks at the level of compliance of local government units (LGUs) when it comes to their respective mandates as indicators of the extent by which the Law is being implemented.

According to JJWC, there are only 1,342 appointed licensed social workers whose work are not focused on CICL alone (2019). This number accounts for only 3% of all LGUs (ibid.). In terms of budget, 33% of all LGUs (14,425 LGUs) have complied with the required 1% allocation from the internal revenue allotment⁶ (IRA) for the strengthening of the Local Council for the Protection of Children (LCPC)⁷, while 6% (2,412 LGUs) exceeded the 1% requirement (DILG-NBOO 2014, as cited in Fugoso-Alcain 2017: 134). In addition, only 4% (1,946 LGUs) have established their Comprehensive Juvenile Intervention Program (CJIP) (ibid.). As regards Bahay Pag-asa (House of Hope/residential youth care facilities), there are currently 58 which are operational in the country, 55 of which are operated by LGUs and the other three by NGOs, whereas only eight of these are accredited by the Department of Social Welfare and Development (DSWD) (JJWC 2019).

⁵ The responsibilities of LGUs as mandated by JJWA include the appointment of a licensed social worker to act as the Local Social Welfare and Development Officer who shall assist the CICL; to allocate at least 1% of their internal revenue allotment (IRA) for the strengthening of the Local Councils for the Protection of Children (LCPC); to craft a Comprehensive Juvenile intervention Program (CRJIP) in line with that of the Juvenile Justice and Welfare Council (JJWC) at the national level; to establish and operate *Bahay Pag-asa* (House of Hope or youth homes) in provinces and highly-urbanised cities; and to establish diversion mechanisms and programs (Fugoso-Alcain 2017: 132; IRR 2014).

⁶ LGUs regularly receive internal revenue allotment (IRA) as a fiscal transfer from the national government, based on factors such as population and land area.

⁷ Local Council for the Protection of Children (LCPC) exists at the provincial, city/municipal, and *barangay* or village/community level.

While LGUs are certainly not faced with the same incidence of CICL, these figures still reflect a huge gap in the implementation of the Law, which in turn is likely to affect how CICL are being catered to. In addition, *Universalialia* (2015: 46) points out some implementation problems that need to be addressed. These include the slow processing of cases, lack in customised interventions, duty-bearers' insufficient capacity and lack of awareness regarding their responsibilities and the rights of children, and the LGUs' weak commitment in implementing programs for CICL (*ibid.*).

In 2018, there were 9,561 cases of children in conflict with the law and children at risk, which was relatively low compared to 13,227 in 2017 and 13,387 in 2016 (PNP 2018, as cited in JJWC 2019). On the surface, when compared with the total number of children in the Philippines which is around 38 million, 9,561 may not be much (Philippine Statistics Authority 2015). But if you look at it closely, these are 9,561 individual children whose well-being depend on the fulfilment of their rights as embodied by the implementation of this Law. Any of these 38 million children could be one of the more or less 10,000 children who come in conflict with the law every year. How a child is treated within the juvenile justice system leaves a lasting impact on their life and development. And these depend on the commitment of various duty-bearers to implement the Law and observe children's interlinked rights.

1.3 Research Objectives, Scope and Questions

I employed a child rights-based approach (CRBA) in looking at the implementation of community-based and centre-based diversion in local governments considered to have best practices⁸ in the field (Barangay Culiati in Quezon City, Barangay Mintal in Davao City, and Valenzuela City Bahay Pag-asa). I aim to illustrate the perspectives of different duty-bearers as regards the different roles that they play in the implementation of diversion. More importantly, I aim to share the voices of former CICL who have spoken about their experiences and the impact of diversion in their lives. While every child is entitled to this right, not every child has had the same experience. My general purpose in doing this is to contribute in elevating the essence and potential of the diversion programs for CICL when implemented effectively, such that more children will have access to diversion that upholds their rights and puts forward their well-being. This study is not a comprehensive, but rather a thematic analysis of the diversion programs.

Through this study, I aim to answer the main question:

How are diversion programs crafted and implemented in select local government units in the Philippines?

The main question shall be supported by the following sub-questions:

- What tasks do duty-bearers (i.e. national government officials, local government officials, non-government organisations, caretakers) carry out as implementors of the diversion programs?
- How do these diversion programs uphold the general principles of the CRC and children's interlinked rights?
- How were former CICL impacted by the diversion programs?

1.4 Structure of the Paper

This study is organised in five chapters. This chapter has provided background information regarding CICL and their right to diversion. This chapter has likewise introduced my aims in this study and the research questions that I explored. Chapter 2 explains child rights-based approach and its implications in my study as my theoretical framework. Chapter 3 illustrates the methods that I used in obtaining the perspectives of my participants. Chapter 4 presents my findings and analysis. Chapter 5 provides my conclusion.

⁸ as recognised by the Juvenile Justice and Welfare Council and the Humanitarian Legal Assistance Foundation (HLAF)

Chapter 2

Theoretical Framework

With my study's aim of exploring the fulfilment of children's right to diversion through the implementation of select community-based and centre-based diversion programs in the Philippines, I deemed it fitting to use CRBA as my framework. As an approach that embodies the principles and provisions of the CRC, I applied the elements of a CRBA as the framework of my study. Its collaborative nature likewise justified my aim to hear the different perspectives of duty-bearers and right-holders in my methodology. In this chapter, I would first discuss in more detail what is meant by a child rights-based approach, what is provided for by the CRC in terms of children's right to diversion, and how I applied the elements of a CRBA in my study.

2.1 A Child Rights-Based Approach to Diversion

2.1.1 Child Rights-Based Approach

Among several ways of linking human rights and development, the human rights-based approach has gained its ground in development (Marks 2005: 24). Rights-based approaches (RBA) introduced the reference to the obligations of the government as duty-bearers based on international human rights law, alongside older concepts of accountability and transparency in good governance, when looking into aspects of development (ibid.: 29). It operationalises international human rights standards in development plans, policies, and processes, through elements such as “express linkage to rights, accountability, empowerment, participation, and non-discrimination and attention to vulnerable groups” (OHCHR, as cited in Marks 2005: 28).

Following the adoption of the UN CRC, there have been several reports and manuals (e.g. Theis 2004; Jonsson 2003; CARE n.d.; United Nations Philippines 2002; Save the Children, 2002, 2005, 2006, 2007, 2008; UN Fund for Population Activities 2010) and documents (General Comments of the UN CRC; the UNICEF Implementation Handbook for the CRC) on how a human rights-based approach to matters that involve children could be translated from the CRC into practice (ibid.: 154; Tobin 2011: 61, as cited in Cortel 2020: 2). “The substance and approach of the UN CRC, which provides a main global normative framework for action in relation to children” forms part of the “prominence of child-related work within the realm of RBA” (Arts 2014: 149). The practicality and comprehensiveness of CRC as a framework, and its accommodating nature in terms of differences in implementation capacities likewise contribute to the extent by which child-related development work have implemented RBA (ibid: 150).

A ‘child-focused’ rights-based approach or, simply put, a ‘child rights-based approach’ (CRBA) emerged with the acknowledgement that children are different from adults, as they have their own ‘special needs and vulnerabilities’ (Save the Children 2005: 25). In

dealing with matters involving children, a CRBA is a holistic approach characterised by several practical benefits including its international legitimacy, clear, shared long term goal, its ability to extract accountability from duty-bearers and to empower disadvantaged groups, commitment to equity and effectiveness (ibid.: 24). This is in line with the aforesaid definition of a rights-based approach, except this time, it is catered towards children and it specifically derives rights and obligations largely from the UN CRC complemented by other human rights instruments pertaining to children⁹.

2.1.2 Children's right to diversion

As mentioned in the previous chapter, children's right to diversion and a child-focused justice system has been legally acknowledged by the UN CRC in 1990. Building on the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) of 1985, CRC provides that¹⁰:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, **detention** or imprisonment of a child shall be in conformity with the law and shall be used only **as a measure of last resort** and for the shortest appropriate period of time (UN CRC 1989: article 37b).

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be **treated in a manner consistent with the promotion of the child's sense of dignity and worth**, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society (UN CRC 1989: article 40, section 1).

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (a) The establishment of a **minimum age** below which children shall be presumed not to have the capacity to infringe the penal law; (b) Whenever appropriate and desirable, measures for dealing with such children **without resorting to judicial proceedings**, providing that human rights and legal safeguards are fully respected (UN CRC 1989: article 40, section 3).

A variety of dispositions, such as **care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programs and other alternatives to institutional care** shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence (UN CRC 1989: article 40, section 4).

⁹ The CRC acts as the "primary, but not exclusive" source, when it comes to CRBA (Tobin 2011: 68). Domestic and regional rights instruments are likewise considered legitimate sources, as much as international human rights instruments (ibid.: 67).

¹⁰ Emphases are mine.

Additionally, General Comment No. 10 of the Committee on the Rights of the Child¹¹ emphasises the restorative character of a juvenile justice system as opposed to the traditional retributive system, and links this to the best interests of children, which could be seen in the following excerpts (UNICEF 2010b: 2):

... This juvenile justice which should promote, inter alia, **the use of alternative measures such as diversion and restorative justice**, will provide States parties with possibilities to respond to children in conflict with the law in an effective manner serving not only the best interests of these children, but also the short- and long-term interest of the society at large (General Comment No. 10 2007: paragraph 3).

... The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression / retribution, must give way to **rehabilitation and restorative justice objectives** in dealing with child offenders ... (General Comment No. 10 2007: paragraph 10).

As a State Party to the Convention, the Philippines is legally bound by these obligations. The country's recognition of these obligations particularly on juvenile justice was translated to domestic law, by virtue of JJWA, which has also been introduced in the previous chapter.

2.1.3 Linking CRBA and children's right to diversion

UNICEF (2010a) outlines that for diversion to be child rights-based, it must be ensured that the "legal safeguards for diversion and alternatives (and for restorative justice, where appropriate) ... [are] respected." This means that the provisions, as stated in the previous section, are observed. In addition, UNICEF (2010a) likewise posits the need for diversion to consider and properly assess the individual circumstances of children, such that the general principles of the CRC are upheld. Looking at the individual situations of children also entails looking at the underlying cause of offending, such that the diversion that would be implemented would be able to address this, thus preventing recidivism (ibid.).

UNICEF (2010a) maintains that the failure to observe these principles and to effectively implement diversion that is child rights-based could negatively affect the lives of children, as I have also mentioned in the research problem. In the implementation of a CRBA, Tobin (2011: 90) also cautions against "moralising and legalism," and instead, promotes "a more sensitive, reflective and collaborative dialogue with the diverse range of actors whose actions (or inactions) affect the capacity of children to realise their rights."

¹¹ The General Comments of the Committee on the Rights of the Child are aimed to interpret and further elaborate on the provisions of the CRC, its implications and how these could be implemented by the State Parties (UNICEF 2010b: 2). While strictly speaking they are non-binding documents, they are authoritative and widely used for interpreting provisions of the CRC.

2.2 CRBA as Theoretical Framework

The task of securing the implementation of a rights-based approach for children is, therefore, a complex and ambitious one. Moreover, if progress is to be achieved it will be incremental rather than seismic. But while an active embrace of a rights based approach for children should be tempered by a dose of realism, there remains scope for cautious optimism because within the space of just over 20 years, the idea of children as rights bearers and the development of rights-based programming for children has already travelled a significant distance (Tobin 2011: 90).

I wanted to begin this section with this quote, as I come to this inquiry with the acknowledgement that a rights-based program implementation on the ground will be far from perfect. While I will be exploring some which are considered good practices in the country, the fulfilment of children's rights remains to be a continuous work in progress, such that there would always be room for improvement. The emphasis regarding the balance between being realistic yet cautiously hopeful speaks to my belief about the capability of the CRC and child rights-based approaches in bringing about meaningful changes in the lives of children, especially children at risk and children in conflict with the law.

Having laid out what is meant by a CRBA and having established the link between CRBA and children's right to diversion in the previous section, this section would be dedicated to the discussion of CRBA, its elements and how I intend to apply these in my study.

To start off, I would like to provide two definitions of CRBA from child rights NGOs who have worked on juvenile justice in the Philippines – Save the Children and Plan. These operationalize their aims and touch on various CRBA elements that need to be met, which could likewise be applied in my study.

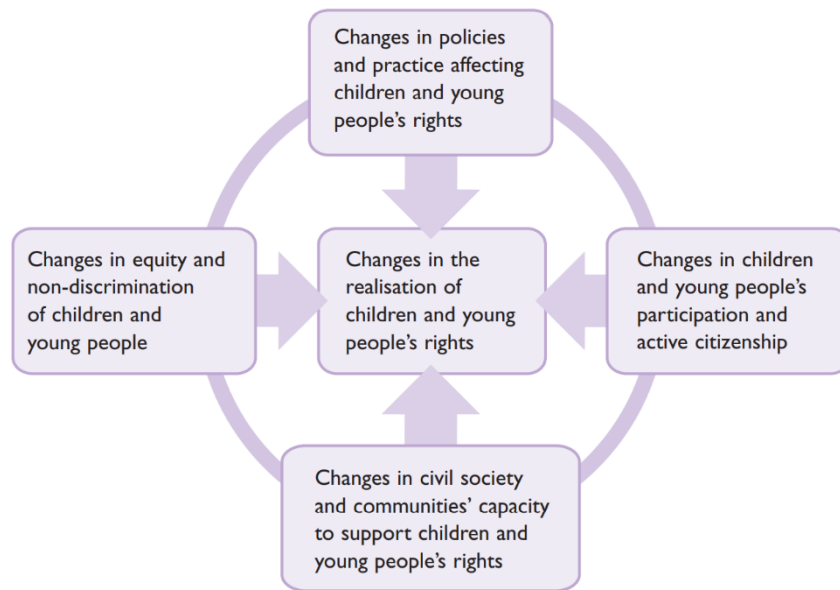
Save the Children refers to CRBA as 'child rights programming' and provides a working definition, as follows:

Child rights programming means using the principles of child rights to plan, implement and monitor programs with the **overall goal of improving the position of children** so that all boys and girls can **fully enjoy their rights** and can live in **societies that acknowledge and respect children's rights** (2007: 5).

Correspondingly, Plan also has its own take on CRBA in the form of 'child-centred community development' approach, which is defined as follows:

...a rights-based model in which **participatory, child-centred community development** is complemented with **initiatives aimed at duty-bearers** at district and national levels. It has meant recognising and identifying **webs of exclusion and discrimination that violate human rights and perpetuate cycles of poverty** (Betts 2007 in Arts 2014:151).

Figure 2.1
Dimensions of Change



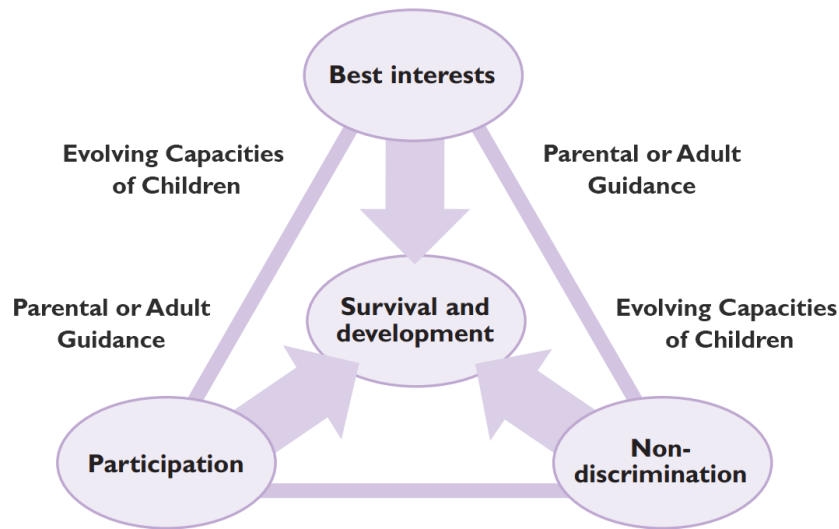
Source: Save the Children (2007:17)

As a precursor to the CRBA elements that I would discuss in the succeeding subsections, Figure 2.1 identifies key dimensions of change that must be met in order to bring about changes in the attainment of children's rights. Save the Children states that these "mutually reinforcing" dimensions of change "address aspects of the duty-bearer-rights-holder relationship (vertical axis), and the issue of power relations (horizontal axis) (2007: 17). Save the Children likewise states that this can act as "a framework for measuring sustainable impact and change in the realisation of children's rights" (ibid.).

In Arts (2014: 156-157), it was illustrated how Plan's child-centred community development approached interventions were evaluated. On one hand, it entailed an inquiry regarding the "structural nature of the solutions pursued," which looked at aspects including prevention, capacity-building among duty-bearers, establishment of focal points, establishment of multidisciplinary child protection safety nets, provision of support to children, advocacy addressed to caretakers, mobilisation of CSOs, and CSO-government collaboration (ibid.). On the other, it looked at specific elements of CRBA, including "whether interventions emphasized the aspect of fulfilling children's rights and targeted rights holders, duty-bearers and CSOs; [whether] particular attention was paid to the situation of [marginalised groups of children]; [whether] children participated, how, and for what purpose (e.g. to inform the intervention and/or to develop their own skills); and [whether] interventions included lobby and advocacy elements" (ibid.: 157).

Considering the scope and timeframe of my study, I did not apply a theory of change, which would entail assessments of changes over a period of time. Instead, I took these dimensions as aspects to look at in the interviews that I had with my research participants.

Figure 2.2
Elements of a CRBA



Source: Save the Children (2007:17) and Arts (2014: 154)

2.2.1 General Principles of the CRC

Figure 2.2¹² shows the relationship and interplay between the elements of a CRBA. To begin with, this illustrates how the fulfilment of one general principle contributes to the fulfilment of another (Save the Children 2007: 11). Moreover, it shows that there is a need to altogether address the different principles in order to fulfil a child’s right to life and development (ibid.). What I found interesting is that these principles are not just means to an end, but are likewise considered ends themselves that need to be pursued.

Apart from the general principles of the CRC, Figure 2.2 also shows that implementation of child rights-based interventions such as diversion must also consider children’s evolving capacities and the vital role of parents or caretakers to provide appropriate guidance to children in accessing their rights (Arts 2014: 154; Kilkelly 2020: 500).

Best Interests of the Child

In instances where matters involving children are decided upon, their best interests should be of utmost concern, more than that of their parents, their community, or the State where they reside (Save the Children 2007: 14). In the context of the diversion of CICL, what is meant by children’s best interests? How do duty-bearers determine these? Considering the impact and implications of programs that these children undergo, are they directly involved in the planning and implementation of these? (ibid.) These questions may seem to be about participation; however, the interrelatedness of these principles makes it impossible to separate one from the other.

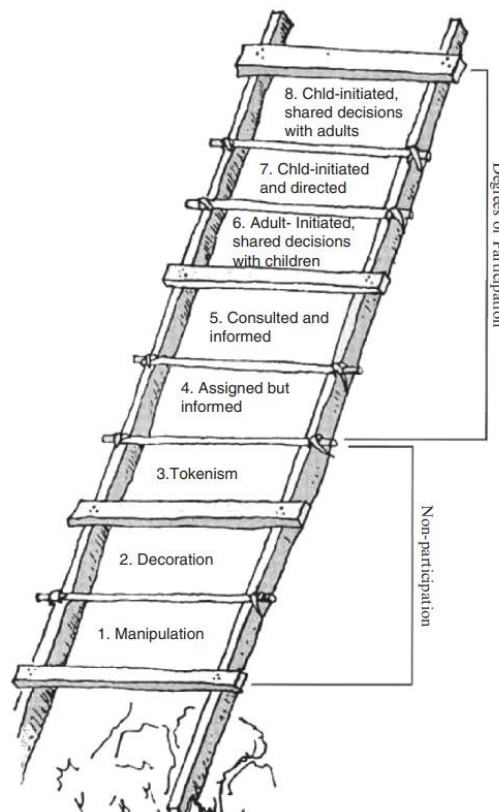
¹² This is a modified version of Save the Children’s (2007: 17) diagram, merging it with the notions of evolving capacities of children and parental guidance, as suggested in Arts (2014: 154).

Participation

As alluded to, the application of the principle of participation means that the right of children to be heard is being met (ibid.: 13). As mentioned earlier, one of the problems that arose in the assessment of diversion programs is the lack in customised interventions (Universalia 2015: 8). Listening to children's voices ensure that interventions being implemented would address their concerns, which could thus prevent failure. Moreover, when children are provided with an opportunity for feedback, it also allows for accountability to be extracted from duty-bearers, especially in instances where duty-bearers may be lacking (ibid.).

There is a risk of 'tokenistic' participation, hence the quality of participation must be ensured (Hart 1992: 8). As previously mentioned, when children are said to have participated, it is necessary to ask if it was to inform the program or to develop their capabilities (Arts 2014: 157). Moreover, it is also important to look at whether they are being fully informed regarding the decisions that are being made on behalf of them, whether these children are given adequate avenue to express their opinion, and whether they are being empowered to know their rights to be able to speak about them (Save the Children 2007: 13). Ensuring the quality of participation likewise entails children from different ages, abilities, groups, and socio-economic backgrounds are being involved (ibid.).

Figure 2.3
Ladders of Participation



Source: Hart (1992: 8)

Non-discrimination

The principle of non-discrimination, on the other hand, entails the “elimination of discrimination in three main areas: against individual children; against specific groups of children; and against the population group as a whole” (ibid.: 12). As has been significantly discussed in Chapter 1, CICL face discrimination in society. Diversion, while primarily aimed to prevent the ill effects of being in contact with formal judicial proceedings, it is also meant to prevent children from being further stigmatised. As this principle speaks to CRBA’s goal of improving the position of children in society, how do duty-bearers apply this principle in the implementation of diversion? Are there any conscious efforts on the part of duty-bearers to raise awareness regarding the discrimination of CICL in society?

Survival and development

The three general principles – the best interests of the child, non-discrimination, and participation – work together in building on each other and contributing to an equally important principle, which is the general principle of survival and development. This principle requires the fulfilment of a child’s right not just to life per se, but to a quality life, in the sense that the different aspects of a child’s life are developed (ibid.). This means that the physical, psychological, emotional, social, and spiritual development of a child are attended to by the State as the main duty bearer, aided by other actors, which will be discussed in a while (ibid.).

2.2.2 Evolving Capacities of Children

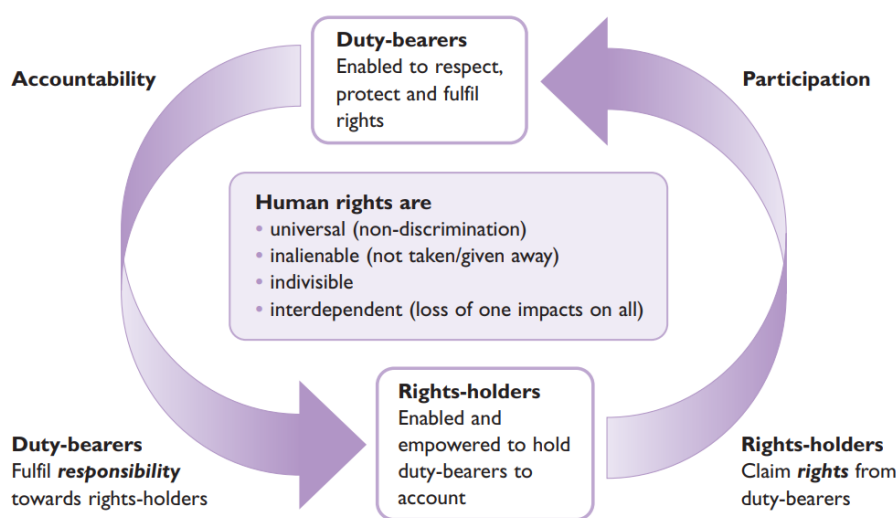
While not considered part of the four general principles of the CRC, the evolving capacities of children as a principle is equally essential to consider in the fulfilment of children’s rights (Hanson and Lundy 2017, as cited in Kilkelly 2020: 501). This concept was not explicitly defined in the CRC but was recognised in Article 5, alongside parental responsibility. The UN Committee on the Rights of Children clarifies that ‘evolving capacities’ refer to the “processes of maturation and learning whereby children progressively acquire knowledge, competencies and understanding, including acquiring understanding about their rights and about how they can best be realized” (General Comment No. 7: paragraph 17, as cited in Kilkelly 2020: 503).

This is a recognition that children’s moral, cognitive and social capacities are still developing, hence, they are entitled “to protection from environments and experiences that will damage their immediate and long-term well-being” (Lansdown 2005: 37, as cited in Kilkelly 2020: 510). In the context of juvenile justice, a balance between recognising the gradual development of children’s agency and the need for protection must be observed. How they are treated and how they are involved should take into account their developing capabilities and its lasting impact on their well-being. While the MACR is not provided in the Convention and is highly contested to be political rather than evidence-based, the concept of evolving capacities ought to be extended to individuals who are still technically considered as children, because “criminal responsibility does not always mean full culpability” (Kilkelly 2020: 510-511).

2.2.3 Guidance from Parents or Caretakers

Parents, or caretakers, are given the primary responsibility over children’s upbringing and development (Art 18). While ‘evolving capacities’ as a concept has been commonly regarded as a separate concept, Article 5 of the CRC put it alongside parental guidance, highlighting the dynamic role of parents or caretakers as a child grows up (Kilkelly 2020: 511). In the context of juvenile justice, parents are expected to prevent children from coming in conflict with the law, to provide guidance and direction to CICL during diversion or court proceedings, and to maintain contact when CICL are deprived of their liberty (Kilkelly 2020).

Figure 2.4
Duty-bearer and Rights-Holder Relationship



Source: Save the Children (2007: 9)

2.2.4 Duty-bearers and Rights-Holder Relationship

Another key characteristic of a CRBA is the relationship between duty-bearers (primarily the State) and rights-holders (the children), which is illustrated in the figure above. The ratification of the CRC and its application on child programs such as the juvenile justice system requires the acknowledgement that duty-bearers should be held into account, whereas rights-holders should be empowered to claim the rights they are entitled to (Save the Children 2007: 9).

Based on the CRC, the State is considered as the primary duty-bearer in realising children’s rights (ibid.: 10). The State could receive support from the private sector or civil society organisations, as it can delegate some of its various obligations (ibid.). Furthermore, the State is also aided by the international community who are likewise obliged to cooperate in efforts to realise children’s rights (ibid.). On the other hand, parents or caregivers are considered as secondary duty-bearers, given their responsibilities over their children and the influence that they hold, positioned between the child and the State (ibid.; Kilkelly 2020: 504).

Chapter 3

Methodology and Methods

3.1 Child Rights-Based Approach and Qualitative Research

While using CRBA as my lens and theoretical framework, I employed a qualitative research approach for this study. My aim to gain a more nuanced understanding of the community-based diversion programs for CICL in Barangay Culiat in Quezon City and Barangay Mintal in Davao City, centre-based diversion programs for CICL in Valenzuela City Bahay Pag-asa was supported by the exploratory and inductive nature of qualitative research (Creswell and Creswell 2018: 41).

In line with CRBA's collaborative nature, the qualitative research methods I carried out (semi-structured online interviews, review of audio-visual, digital materials, and documents) enabled me to capture the different meanings that the different participants (i.e. the duty-bearers and rights-holders) hold as regards the implementation of diversion programs, based on their individual perspectives and experiences (ibid.: 258; Hesse-Biber 2017: 4; King et al. 2019: 57; Save the Children 2007: 16; Tobin 2011: 90). These multiple perspectives added up in building a picture that explains the phenomenon under study, hence claimed to "[mirror] real life" (Creswell and Creswell 2018: 258).

Since the first quarter of this year, we have been faced with a global pandemic. This resulted in drastic changes in our everyday life, this research included. Due to travel restrictions and safety issues, my original plans of doing field work back home were cancelled and replaced with online qualitative research. I do not find it ideal, because in my perspective, it lacked the 'personal' aspect of building relationship and trust with people, and observing them in their natural setting (Creswell and Creswell 2018: 257).

Even before the current context of pandemic, online qualitative research has been becoming more widely used, with the continuous development of information and communication technologies (Salmons 2016: 6). It is argued that shifting qualitative research online did not require a "wholesale redefinition" of qualitative research, since 'traditional' qualitative methods of inquiry are still used, only with the mediation of Internet (ibid.). Naturally, this mediation has implications for the methods used, as well as for the conduct and ethics being observed (ibid.). Nevertheless, while characterised with limitations which I would be discussing in detail later, online qualitative methods proved to be useful in making this research possible, despite the current circumstances.

3.1.1 Positionality as Researcher

In this study, I positioned myself as an outsider, a learner, and an advocate.

An Outsider. I considered myself predominantly an outsider in this research. I have never worked for the government or in an NGO, nor have I experienced diversion for CICL. Although, it came with the acknowledgment of the complexity of the space between a researcher and research participants – that one cannot be fully an outsider nor an insider (Dwyer and Buckle 2009: 61). This also came with a conscious effort to balance between prior knowledge that would help me better understand their experiences, and preconceived notions and biases that I must try to set aside (*ibid.*: 55-56). I drew commonality on the fact that I also come from the Philippines, and that I have done several studies involving the barangay and the municipal/city level government. I tried to compensate the status of being the ‘other’ by being genuine and transparent with my aims and my commitment to fairly represent the views of the research participants (Glesne 1999, as cited in Dwyer and Buckle 2009: 60).

A Learner. Learning about children and youth studies has been a personal journey for me. It has been three years since I graduated from college, yet adulthood seems to remain elusive for me (Durham 2007). When does one really become an adult? This is a question that I personally still find difficult to answer. Nonetheless, this academic journey has allowed me to better understand the childhood that I have had, to unpack and even unlearn some of my preconceived notions, and more importantly, to be more critical of the way society views and shapes childhoods. Their current circumstances should be given the same importance that is accorded to what they could become. In the same way, it must be emphasised that how children are treated today could make a lasting impact on them for the rest of their lives.

An Advocate. The things that I have learned prior to this have reinforced my intention to pursue this study, and to advocate for children’s rights, in ways within my reach. All the interviews that I did, the literature that I read, and the videos that I watched left their mark on me and further strengthened my desire to actively advocate for children’s rights.

3.1.2 Research Participants

I used purposive sampling in selecting the participants for my study, basing the selection on my theoretical framework and my existing network of resources (Hesse-Biber 2017: 62). I employed purposive sampling because I had to deliberately seek participants with certain knowledge, background, or experiences, which would meet the requirements of my study (Morse 2004: 994, as cited in Lewis-Beck et al.: 2004). As I have previously mentioned, a CRBA is collaborative in nature, hence my study entailed a diverse range of actors who could provide me with different perspectives and angles on the implementation of diversion, based on their respective experiences (Creswell and Creswell 2018: 258; Hesse-Biber 2017: 4; King et al. 2019: 57; Save the Children 2007: 16; Tobin 2011: 90).

As such, I used this Circles of Influence and Obligation tool of Save the Children (2007: 16) as my basis for selecting my participants. The outcome is reflected in the table below. This tool was useful since it helps map the different roles and responsibilities in the context of implementing juvenile justice systems and diversion programs. This illustrates how different levels of governance and different social units, based on their proximity to the child, capacity, gravity of influence and obligation, altogether impact children's claim to their rights (ibid.:14-15).

Figure 3.1
Circles of Influence and Obligation



Table 3.1
Research Participants

Level	Organisation/LGU	Name	Designation
National Government	Juvenile Justice and Welfare Council National Secretariat	Atty. Tricia Clare Oco	Executive Director
		Ms. Analyn Favila	Technical Staff
City Government	Bahay Pag-asa, Valenzuela City	Ms. Ma. Lourdes Gardoce	Centre Head/ Social Worker
Barangay (Community-level) Government	Barangay Culiati, Quezon City	Mr. Victor D. Bernardo	Barangay Captain
		Ms. Cristina V. Bernardino	BCPC Committee Chairperson
		Ms. Alelie Bernardo	Case Manager
		Ms. Ruby Sason	
		Ms. Roxanne Palacio	Children's Desk Officers
		Ms. Evelyn Cutamora	
	Barangay Mintal, Davao City	Mr. Rey Amador Bargamento	Barangay Captain
Civil Society	Consuelo Foundation	Ms. Emma Melizza F. Ignacio	Communications and Advocacy Manager
Family	Barangay Culiati, Quezon City	Maria ¹³	(parent of a former CICL)
'Child'	Bahay Pag-asa, Valenzuela City	Kristoffer ¹⁴	(former CICL; diversion program graduate)
	Barangay Culiati, Quezon City	Alvin Abdul	(former intervention participant/ youth leader; volunteer mentor)

¹³ Not her real name

¹⁴ Not his real name

For most of my research participants at the organisational level, I used previous partnerships from my workplace. I considered the three LGUs (Valenzuela City, Barangay Culiati of Quezon City, and Barangay Mintal of Davao City), given their good practices recognised by JJWC and HLAF. My affiliation with the local government research centre I was working in allowed me to engage with my initial research participants more easily. Nonetheless, I made it clear that this research was personal and independent of this affiliation.

I initially intended to have two cases each for the centre-based diversion, community-based diversion, and CSO partners. I e-mailed organisations within and outside my affiliation's network alike, and asked for assistance in contacting them through phone. However, while securing appointments, it was understandable that some of the organisations that I asked had to prioritise their crucial responsibilities amidst the challenges brought by the pandemic. Nevertheless, my aim of having a diverse range of participants from each of the levels in the Circles of Influence and Obligation was still met.

As regards my research participants from the 'family' and 'child' level, they were referred to me by the LGUs that I have selected. There was no way I could access or recruit them as participants without the referral and assistance of the people they have worked with at the Bahay Pag-asa or the barangay, considering the social stigma that is still associated with CICL (King et al. 2019: 62). I recognise that my initial research participants at the local government level could act as 'gatekeepers,' such that they would only refer people who share similar views with them (ibid.). It was also with the acknowledgment that the do no harm principle would prevent me from disclosing things that could put these participants in harm, but I did not have such ethical dilemma in the duration of the interviews.

Additionally, while I intended to interview former CICL who have completed diversion for my study, I was referred to a former CAR turned youth leader who participated in the barangay's main activity for diversion, alongside CICL and other children¹⁵. I found it nonetheless value-adding, as it would bring another perspective to the study, hence I pushed through with it.

3.1.3 Semi-structured online interviews

I conducted semi-structured online interviews as my main method of inquiry. In contrast with structured interviews, semi-structured ones allow for flexibility and fluidity, covering themes rather than following a strict sequence of questions (Mason 2004, as cited in Lewis-Beck et al. 2004). Since 'formal' interviews sometimes tend to be intimidating for some, I wanted the atmosphere of my interviews to be informal and conversational. These were led by my research interests, yet developed by the narratives that my research participants willingly shared (ibid.).

Prior to the interviews, I prepared interview guides comprised of open-ended questions, which were open to my participants' interpretation (Fetterman 2004, as cited in Lewis-

¹⁵ The details of which will be discussed in detail in Chapter 4.

Beck et al. 2004). As it was in a conversational format, it allowed my research participants to freely tell their personal stories and experiences in the vernacular. I actively listened whether some of the things that I intend to know have already been answered, and on what areas I needed to probe more. There were also instances when I did not have to ask some of the questions I had in mind or to follow the sequence of themes that I have already imagined, because they have already shared what I ought to know. On the other hand, there were also instances when I had to clarify and ask follow-up questions on things that they have shared.

For the duty-bearers, I asked them about their programs and/or their daily experiences. As we went on with the details, I was able to operationalise the CRBA elements that I have identified in my framework, without asking directly whether these things are observed. I likewise asked my research participants on the 'rights-holders' side to share how the entire experience of diversion for the former CICL and the intervention for the former CAR. I provided probing questions, along the way, touching on aspects of diversion and CRBA elements as discussed in the previous chapter.

As I previously mentioned, I do not find online interviews ideal when doing qualitative research, but I was surprised that these interviews nevertheless turned out to be personal, insightful, and heart-warming. I found it challenging knowing that what is seen in the computer screen is not a complete and perfect picture of how a person feels and what she or he thinks and reacts. The visual cues were also limited, such that there would suddenly be overlaps when people simultaneously speak. In this context, it is possible to read a bit through one's body language, but not as much when you are together in person. Moreover, since some of the conversations that I had were a bit more personal to them, I was mindful in expressing my interest and empathy, in ways that could transcend this physical barrier.

Given the current context of pandemic and physical distancing, the shift to online meetings has made my participants as well as myself more familiar to this method and online conference platforms. The interviews for this study were carried out through Zoom conferences and a Facebook Messenger video call, which depended on what was preferred and accessible to my research participants. Considering the Internet stability and speed in the Philippines, problems in connectivity arose. This interrupted the flow of some of the conversations, but we were able to work around it.

Whenever I do interviews, I always ask myself what is in it for them? How could the interviews benefit them, as much as it would benefit my research? The interviews took around an hour to two hours each. I was sometimes concerned about how much time I was getting from what they were supposed to be doing, but I was comforted by their eagerness to share, and the fact that they were also appreciative and grateful for my interest in the topic. In a way, it felt like alongside being a researcher, I was becoming a partner in forwarding children's rights. They were also looking forward to seeing the outcome of the research, and its possibility to inform their practices on diversion.

3.1.4 Supplementary Sources

Apart from the interviews that I did, I also looked at existing audio-visual and digital materials including videos, photographs, online articles, and social media posts (Creswell and Creswell 2018: 263). During the start of my research, I watched videos of news on the circumstances of CICL in the Philippines. Moreover, I also looked at advocacy videos from the Juvenile Justice and Welfare Council and UNICEF Philippines.

Before even delving deep into this research, these materials allowed me to see the stark difference between bahay pag-asas that are not given adequate attention and budget for infrastructure, staff, and programs, and those that have comprehensive programs for children. It was appalling to see how much rights are being violated, how much lives are negatively affected by the inadequacy of efforts to fulfil duties, and how far we are as a country in fulfilling children's right to juvenile justice. On the contrary, practices with effective implementation made me feel hopeful that it is possible.

My research participants from the local government also allowed me to look at audio-visual materials and presentations with action photos of the programs that we talked about in our conversations. On the other hand, advocacy videos from Consuelo Foundation were also shared to me. During these interviews, what I also found interesting was the reference to previous engagements with other parties, which were available online.

Considering the limitation of not being able to visit and personally see the barangays and bahay pag-asa brought about by the pandemic, the videos, photographs and presentations allowed me to better visualise the diversion programs that we talked about in the interviews. For instance, I was able to see the dragon boat team of barangay Mintal through videos from JJWC, the performances of the Anak Teatro of barangay Culiati through videos shared to me, and the day-to-day experiences and perspectives of CICL from the Bahay Pag-asa of Valenzuela City. Moreover, things that have been previously written about them also aided me in better understanding the programs in place.

3.2 Ethical Considerations

The principle of 'beneficence' or the obligation to prioritise the participants' well-being and decisions was my guiding principle in the conduct of data collection and analysis (Salmons 2016: 62). In the context of the online interviews, the protection of the participants and the confidentiality of the interviews were extended in the protection of their data or the video recordings (*ibid.*: 77).

As regards informed consent, I made it a point to inform my participants regarding the study, its aims, the scope of interview, how the data obtained will be used, the possible benefits of the study and the possible negative circumstances that may arise (*ibid.*: 78). For the 'organisational' duty-bearers, I sent a consent form for their review, prior to the interview. As regards the private individuals that I interviewed, it entailed the help of the duty-bearers

who referred them and my local research assistant who contacted them to explain the study and come to an agreement on what was amenable for them.

Despite having the consent agreement before the interview, I made sure to explain at the start and in the duration of the interview that their participation is voluntary, that they have the option to refuse answering questions they are not comfortable with, and to withdraw from the interview anytime (*ibid.*). Mindful of the apparent power difference between myself as the researcher and my research participants, I always tried to highlight my positionality as a learner – that they know better, because these are things that they have experienced. Furthermore, I emphasised that their statements could be anonymous, explaining its repercussions; and that the video or voice recording was optional, and would only be used to review the responses and would be protected from public release.

Chapter 4

Findings and Analysis

4.1 The Diversion Programs

4.1.1 Centre-based Diversion at Bahay Pag-asa, Valenzuela City

The Bahay Pag-asa of Valenzuela City is a 24-hour residential and rehabilitation facility for CICL. It was established in 2013 and is managed by the city local government.

There are various groups of children that the centre caters to (Gardoce 2020, personal interview). One would be the children who do not have criminal responsibility, meaning those who are aged 12 years and a day to below 15 years old, but have either committed grave offenses and are subject to intensive juvenile support, or are repeat offenders. Another one would be children who already have criminal responsibility, meaning those who are aged 15 years and a day to below 18 years old, and have committed offenses below six years of penalty, which make them entitled to diversion. Lastly, there are also children who also are held criminally responsible and have committed offenses with penalty of six years and a day and are thus not eligible for diversion. They are accorded suspended sentence until they reach the age of majority, and are instead given a disposition program, also comprised of interventions that could have a positive impact towards them and their sentence.

Before children are transferred to the custody of Bahay Pag-asa, the City Social Welfare and Development Office (CSWDO) has a Child Protection Centre where the law enforcement officer could bring the CICL for assessment (Valenzuela CSWDO 2019). It is run by a “multi-disciplinary team composed of social workers, doctors, police officers, psychometrician, and barangay representatives” (ibid.). When a case of CICL is determined to be for diversion usually at the court level, a multidisciplinary team is convened as the diversion committee, alongside the parent and CICL, in planning and crafting the diversion contract.

The diversion could be fulfilled in the centre for the entirety of the contract but may also be a combination of centre and community-based interventions when circumstances deem it possible (Gardoce 2020, personal communication). CICL stay in Bahay Pag-asa for six months to a maximum of one year and take part in a comprehensive set of interventions, that are tailored fit to their capacities, their needs, and what is agreed upon in the diversion contract (ibid.). These interventions include life or social skills training, education (formal education, alternative learning system), vocational skills training, livelihood training, counseling, psychotherapy, behaviour management through positive discipline, spiritual services, sports and recreational activities, among others (Valenzuela CSWDO 2019). This holistic approach recognise children’s interlinked rights, and ensure the development of the child while inside the centre. The city likewise strives to provide the same set of interventions in the barangay or community-based diversion, through the partnership of the CSWDO through the Child Protection Centre and the community through the BCPC, such that the

only difference would be the setting these are implemented (Gardoce 2020, personal communication).

4.1.2 Community-based Diversion at Barangay Culiat, Quezon City and Barangay Mintal, Davao City

As discussed earlier in Chapter 1, diversion could likewise be implemented at the community-level through the Barangay Council for the Protection of Children or BCPC. Community-based diversion may be done under the supervision of the BCPC and/or the Local Social Welfare Development Officer of the city/municipality.

The BCPC of Barangay Culiat, Quezon City was recognised in various categories by the Humanitarian Legal Assistance Fund (Tatak Barangay Award First Runner-Up, Outstanding Child Rights Advocates, Outstanding Child Rights Organisation, Best Case Manager) in its BCPC Congress 2017 for its diversion initiatives (HLAF 2017). On the other hand, the BCPC of Barangay Mintal was also awarded by JJWC as one of the LGUs in 2018 with best practices on juvenile justice for its dragon boat team, which helped reduce the number of CICL to zero (DZRH 2018).

4.2 Involving children

How do duty-bearers determine what is in the best interests of children? How do they craft interventions that work and make a meaningful impact towards the lives of CICL? It all boils down to involving these very children. Literature has provided me with a background on how children participation could look like in the context of diversion and juvenile justice, but my personal conversations with my participants gave life to it. Their experiences challenged my preconceived notion regarding the possibility of meaningful children participation in this context. This scepticism roots from my personal experiences in a society characterised by a collectivist culture that regards adults as ‘absolute authority,’ especially in more formal institutions, thereby limiting children’s ability to speak for themselves (Hart 2008: 27-28).

As regards children’s voices, consultation with them elucidate their opinions, interests, and capacities, which are used to inform the interventions that they would undertake as part of their diversion. For the experience of Valenzuela City Bahay Pag-asa, I was provided a walkthrough of how diversion starts with a case planning that already involves the child and the family, together with their multidisciplinary team. This is aimed to determine what is appropriate and workable for the child. The centre head of the BPA stressed the importance of this involvement at the onset, saying “when children and the family are involved in the plan, they are more likely to abide by it, as compared to when it is only imposed to them” (Gardoce 2020, personal interview).

As I was curious whether the said participation is maintained when the CICL are already undergoing their diversion inside the BPA, I asked whether they provide feedback mechanisms for children. I was told by the centre head that while they provide ‘formal’ feedback mechanisms such as regular meetings, confidential surveys and a suggestion box, they

strive to create an enabling environment for open communication between the children and the social workers and house parents. “You need to make them feel safe, and that they are being heard. This way, they will be able to better help you in implementing programs for them” (ibid.). Apart from verbal feedback, they are also attuned to the behaviour of CICL under their care, considering the sensitivities of children, especially during this pandemic. “Most of the time, children have the solution to their own concerns,” she posited (ibid.). I regard this as meaningful children participation since children are ‘consulted and informed’ (Hart 1992: 12). They act as ‘consultants’ and provide input to the interventions that are run by adults (ibid.).

Similarly, when asked about the beginnings of their diversion program, the barangay captain and former head of the BCPC of Barangay Mintal shared how building a relationship with their barangay’s CICL, who were mostly part of gangs, allowed them to better address the issue at hand. He described the situation as a “cycle” and that “the remedy that [they] were putting into the problem was very temporary” (Bargamento 2020, personal interview). Bringing together these children and providing a venue to communicate with them allowed the barangay to realise that “how they [viewed] the problem was the problem” (ibid.). They initially saw the risk-taking behaviours of these CICL as “a phase they would outgrow,” hence the “usual cycle of the game of tag between the children and the police, and the diversion that did not prevent these children from reoffending” (ibid.). Taking these learnings as input to their programming, they were able to tackle the issue from a different standpoint, welcoming the CICL into the barangay as friends and providing new interventions for them.

The open communication line that they have harnessed allowed these children to voice out that they wanted something else, apart from the seminars and activities already given to them. Hence, when a partnership opportunity with the Basecamp Dragons came along in 2015, the barangay tried if dragon boat as a sport would suit as a diversion activity for the CICL. The barangay captain shared, “what we wanted was to give these children an opportunity to really put their energy [and] their time on something that will build them as a person” (ibid.). What I found interesting when we were talking about this was how they recognised that these children already knew teamwork, but in a negative context. The barangay recognised the ‘informal participation’ of these children with their peers and decided to turn it into ‘formal participation’ within the program (Hart 2008: 20). The trainer of the Mintal Dragons, the dragon boat team of CICL that was formed, shared in a video about the diversion, that the participation of the CICL in the trainings allowed them to hone not just their physical techniques, but also their discipline and team culture (Berdos 2018, in JJWC Official 2018).

For Barangay Culiati, they have Kwentong Buhay or life stories as a means to understand children’s background and circumstances, as well as their capabilities and interests (Bernardino 2020, personal interview). This is done before any intervention is given to a CICL. When asked how they determine what interventions to give these children as part of their diversion, the head of the BCPC shared that “it actually comes from [the children] themselves, based on their interests and what they would choose” (ibid.). She added that alongside alternative education, community service and seminars, they have various activities

for children which include a range of visual and performing arts, but children have been more interested to join their theatre group, Anak Teatro ng Culiati (ibid.).

In our exchange, I asked her how the BCPC finds out whether an intervention is well-received by a child. She candidly shared how the children have been vocal about their enthusiasm during practices and theatre performances. Their personal relationships also facilitated informal and open communication between the children and the barangay. In addition, she illustrated this further by comparing the Anak Teatro experience to a previous handicraft activity, saying: “You would see that they were not as happy. They were just doing it because they were asked to ... Whereas, in Anak Teatro, they know that it is something they could consider their own ... They are happy because they can express themselves and they have ownership of their work” (ibid.). It was an illustration of children’s feedback on contrasting degrees of participation, with the latter leaning towards a more active participation for children (Hart 1992: 8). A pioneer member of the theatre group, who is now a volunteer mentor, recalled his experience in the theatre group, sharing: “It was difficult at first... but I learned discipline as a core value, which is different in the context of theatre ... It was eventually fulfilling because we wrote our very first play using our personal experiences as children” (Abdul 2020, personal interview).

4.3 Breaking away from discrimination

“CICL like us only wish that you would not judge us right away. We may have done something wrong, but that does not mean you know what we have been through”¹⁶ (‘Boy’ 2020, in UNICEF Philippines 2020). I wanted to start this sub-section with that quotation because it links the possibility of overcoming misconceptions or stigma associated with CICL to listening to children and allowing them to participate, which have been discussed in the previous sub-section.

In my introduction, I opened the discussion about how CICL continue to be subjected to discrimination in society, having their identities defined by just a single dimension of their lives. It came as no surprise when this emerged as a common theme in the interviews that I did. These conversations affirmed the negative perceptions towards CICL that persist until today. The interviews likewise provided a nuanced illustration of how non-discrimination as a principle could be applied in eliminating discrimination against first, specific groups of people and second, against individuals (Save the Children 2007: 12).

“We, Filipinos, tend to invest money on the good young people, but we somehow never include those who cause us stress” (Bargamento 2020, personal interview). The barangay captain of Barangay Mintal brought this up, as we talked about how the transformation of their diversion started. This struck me because this view is problematic, yet it remains true for a lot of contexts (e.g. from homes to schools to government programs catered towards academically excellent or talented children). This goes against the principle that rights are universal and inherent, not incentives to be earned. Meaningful change in their practices

¹⁶ This was a call from a former CICL in UNICEF Philippines’ video promoting diversion instead of detention.

required them to challenge this notion and recognise that “just like what [they] are doing for good children, [they should also] invest money and time [on these CICL]” (ibid.).

The Law already mandates the provision of diversion, but this discussion suggests that a change in mindset about certain groups of children such as CICL and a better understanding and appreciation of children’s rights among duty-bearers are necessary for them to consider including juvenile justice efforts in their priorities.

“Every child deserves to be loved, especially when they do not seem to deserve it” (Bernardino 2020, personal interview). The BCPC head of Barangay Culiati shared this as their mantra in running the Council, and in providing interventions for children. Aware of the stigma associated with CICL, “the barangay decided for their theatre group not only to involve CICL, but also youth leaders, so that when they perform, nobody can say who is CICL among the group” (ibid.). Alvin shared that “initially, [he] was not open to the idea of being involved with CICL under diversion, worried that they might be bad influence for [him]” (Abdul 2020, personal interview). But he added that with proper guidance from the barangay staff and the understanding that CICL are children too, just with different circumstances, he got along with the other members of the pioneer group of Anak Teatro. I found this initiative to reduce discrimination perceptive, yet I argue that decisions like this that involve other groups call for a careful reflection and consultation on the part of implementors regarding possible implications.

How the barangay as a local authority regards the children affects not only the interventions implemented for them, but also how the rest of the community looks at them. “They are already labelled... They were in a position where everybody was the enemy... even everybody in the barangay... If they are not welcome at home, in their neighbourhood, in the police station, who would welcome them?” (Bargamento 2020, personal interview). Welcoming CICL in the barangay facilitated the open communication between them and their participation in the diversion. A former CICL who went through centre rehabilitation in the city and community diversion with Barangay Mintal shared how the interventions allowed him to change from his old ways, continue his studies and work for the barangay, which had an impact on how he saw himself. “Before I was a burden, now I am able to help my father and mother” (Demol 2019, in JJWC Official 2019).

“The benefit of this law is that it removes the label of children as CICL,” the centre head of Valenzuela Bahay Pag-asa said as she shared that children have the liberty not to disclose their case, when their program has been successfully completed (Gardoce 2020, personal interview). I find this provision noteworthy because when coupled with an effective diversion that could prevent reoffending, children can really move forward, without any criminal record to hold him or her back.

Kristoffer who used to be a resident of the BPA shared with me that inside the centre they were not regarded as offenders, instead they were viewed as victims of their circumstances. When I asked him about how life has been since he left the centre, one of the things he shared was his view regarding the stigma about CICL: “...there would always be people who would say negative things about you ... Just keep walking. You may have stumbled in

the past, but what is important is that you got up, and are on your way to your dreams” (2020, personal interview).

4.4 Vital role of the family

One of the common themes that surfaced from my interviews with the implementors of diversion would be the attribution of juvenile offending to poor parenting and the lack of a nurturing relationship in their families. It was something that they learned by communicating with the CICL that they cater to. They recognised other factors such as poverty and peer influence, but emphasised the major role played by inadequate parenting for children to come into conflict with the law.

The barangay captain of Barangay Culiat shared that after having recognised this as a problem, “[they] decided that prevention efforts must address this, simultaneous with [their] ongoing diversion” (Bernardo 2020, personal interview). They promote positive discipline through Anak Teatro. As introduced earlier, this is one of the intervention programs for CICL. The plays prepared and performed by the children are based on their own personal experiences. These are then shown to different audiences, initially within their community, including these children’s own parents. The theatre group have been tapped by the DSWD for the mandatory family development seminars of the Pantawid Pamilyang Pilipino Program (4Ps), as well as UNICEF, JJWC, and other organisations to perform in various occasions. I found this noteworthy because children’s participation in this regard allows them to be advocates of their own rights.

In the context of centre-based diversion such as that of Valenzuela Bahay Pag-asa, parents are actively involved in the case conferences and proceedings of children. The head of the centre also highlighted how important family is with respect to a children’s emotional well-being, hence they make it an objective to make children’s stay with them as short as possible. “... Even if you provide all of a child’s basic needs in a home-like environment, you would not be able to provide the love of a family” (Gardoce 2020, personal interview). Indeed, a residential facility can only strive to be a home.

Nonetheless, Valenzuela Bahay Pag-asa has staff who act as house parents, alongside social workers who guide these children in their everyday activities. When asked about their relationships inside the centre, Kristoff shared that their house parents and social workers were friendly towards them, he even recalled a stay-in house parent who they fondly called Tatay (father) who was like a real parent to them. Moreover, he shared about the “brotherly bond that was formed among them residents” (2020, personal interview).

Regular visits with the children are also encouraged. During these visits, parents are also provided with parenting sessions to address any inadequacy they may have when it comes to parenting.

On another note, aspirations to be with their family and the desire to be forgiven by their parents were some of the themes brought up by CICL from five different BPAs who

participated in a song writing workshop in partnership with Consuelo Foundation (Ignacio 2020, personal interview). Kristoff shared that being away from home was difficult. The regular visits of his family and the support that he received from them were his source of strength and motivation to finish the diversion program. However, not all children receive the same support. As a point for reflection, when family is considered essential to a child's development and as recognised in the CRC, how can the implementors actively encourage parents to make regular contact with their children?

The regular contact of the BPA residents with their family turned out to be challenging during this pandemic, the centre head shared. During the initial months of strict lockdown, visits were not allowed, which they tried to resolve through video calls. It was not until later this year, when protective measures such as transparent barriers have been in place to ensure the residents' physical safety, while addressing their emotional needs.

4.5 Collaboration among duty-bearers

It takes a village to raise a child, as the old proverb says. Indeed, the fulfilment of children's rights entails the collaboration of various actors, including parents and children. As has been discussed earlier, the CRC and the Juvenile Justice and Welfare Act are already in place, but much is yet to be done to fully implement these.

In my interview with the Executive Director of the National Secretariat of the JJWC, continuous capacitation and advocacy efforts are being done by the national agency to bridge the gap in terms of the implementation of diversion at the different levels of the juvenile justice system (i.e. court, prosecutor, police, barangay) (Oco 2020, personal interview). This could be related to the earlier discussion regarding the need to make more duty-bearers realise that CICL are entitled to their rights, and that it is their duty to implement the JJWA.

On the other hand, Consuelo Foundation, as an NGO that focuses on children's rights, shared that they "work through an ecosystem," meaning they have initiatives that are addressed towards children, the family, the community, the local and national government (Ignacio 2020, personal interview). Their foundation has partnered with JJWC, Child Rights International Network, Child Protection Network, NGOs, BPAs and LGUs including Valenzuela City. For improvements to take place, initiatives, advocacy, and capacity-building must be carried out at these different levels.

The ingenious interventions of Barangay Culiati and Barangay Mintal for diversion were born out of partnerships with peers from organisations such as Philippine Educational Theatre Association (PETA) and Base Camp Dragon, respectively. Barangay Culiati shared that in most of their interventions, purok (zone) leaders, volunteers and private donors are involved. As regards the hearing of cases of CICL under their care, a smooth working relationship between the BCPC and a 'child-friendly' judge was ultimately beneficial for the children. Since the diversion process of CICL involves different entities within the government, they emphasised that it is important for CICL to be regarded with the same level of concern all throughout, not just within the barangay.

Chapter 5

Conclusion

Against the backdrop of persisting discrimination faced by CICL and the gaps in the implementation of the Juvenile Justice and Welfare Act, the aim of this study was to contribute in the discussion about the potential of diversion in providing second chances for CICL when effectively implemented. Hence, through a child rights-based approach, I explored the crafting and implementation of centre-based diversion in Valenzuela City Bahay Pag-asa and community-based diversion in Barangay Culiat, Quezon City and Barangay Mintal, Davao City, which have been recognised as some of the best practices. My thematic analysis resulted in the following findings:

First, various degrees of participation among children (Hart 1992) were observed in the implementation of diversion interventions, but those that leaned towards more meaningful and active participation resulted in more engaging and impactful interventions. Consultations with CICL allowed duty-bearers to reconfigure their approach and to foster open communication between them. Children showed enthusiasm in participating in the theatre group, *Anak Teatro ng Culiat*, where they were able to exercise their agency. The Barangay Mintal experience illustrated how informal participation in gangs were turned into formal participation in the dragon boat team.

Second, discrimination occurs against CICL as a group and against individuals in their daily experiences in the community (Save the Children 2007). Breaking away from discrimination entails challenging preconceived notions, such as CICL not being worthy of ‘investment’ and deserving of attention. Diversion prevents CICL from being further stigmatised through the provision of alternative interventions and the omission of criminal record. Yet, continuous advocacy is still necessary for society to better understand and treat CICL, and it is apt for barangay councils to take the lead in the communities.

Third, the role of parents as secondary duty-bearers in the diversion of CICL cannot be discounted. Parents are actively involved the case conferences and hearings of children, considering the latter’s evolving capacities. Valenzuela Bahay Pag-asa strives to maintain contact between CICL and their parents. Moreover, parenting sessions and play about parenting and positive discipline are carried out to improve relationships between parents and CICL.

Fourth, the collaboration among different duty-bearers is necessary to enable continuous capacity-building and advocacy, new interventions, and efficient diversion process.

The results are rather straightforward, yet it is the experiences shared by the participants along these lines that provide insight on how such interventions could be done, and what needs to be revisited or challenged. As designed, the study was able to provide the perspectives of the implementors of the centre-based and community-based diversion from the local government level, and the children who participated in the diversion. The findings were more focused on the experiences in crafting and carrying out the diversion intervention.

Hence, it was not able to account for the whole diversion process and shed light on handling and hearing of cases, which could be a topic for further research. Furthermore, other research methods could be explored in bringing forward children's voices in this context.

Considering that children's lives are at stake when they are not provided with interventions to help develop them and prevent them from reoffending, perhaps there is a need to revisit current strategies to persuade, capacitate, and assist duty-bearers in providing diversion for CICL.

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